

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
2005 DEC 15 P 12:08

DERICK TYLER

Petitioner,

v.

DAVID NOLAN

Respondent.

Civil Action No. 04-12680-NMG

**RESPONDENT'S MOTION TO DISMISS PETITION
FOR WRIT OF HABEAS CORPUS AS TIME-BARRED**

Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, the respondent respectfully submits this motion to dismiss the petition for a writ of habeas corpus filed by the petitioner, Derick Tyler. The petition must be dismissed as time-barred under 28 U.S.C. § 2244(d), the statute of limitations for federal habeas corpus petitions. The petitioner's conviction became final on September 14, 1994, ninety days after the Massachusetts Supreme Judicial Court affirmed his conviction and the denial of his motion for a new trial. Since this date was prior to April 24, 1996, the effective date of the Antiterrorism and Effective Death Penalty Act ("AEDPA"), the petitioner was required to file his federal habeas petition within one-year of this effective date. *See Cordle v. Guarino*, 428 F.3d 46, 48 (1st Cir. 2005). However, this petition was not filed until December 5, 2004, over seven years after the limitations period had lapsed. Accordingly, the petition must be dismissed as time-barred.¹ In support of his motion,

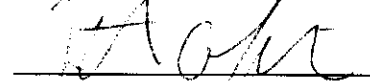
¹ The respondent's remaining defenses are not addressed here because the running of the statute of limitations mandates dismissal of the petition. In the event that this Court declines to dismiss the petition as time-barred, the respondent reserves the right, and requests the

the respondent relies on the accompanying memorandum of law and exhibits.

WHEREFORE, the respondent respectfully requests that the Court dismiss this habeas petition with prejudice on the grounds that it is time-barred.

Respectfully submitted,

THOMAS F. REILLY
ATTORNEY GENERAL



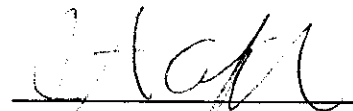
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Gregory W. Reilly
Legal Intern
On the Motion

Dated: December 14, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the petitioner, Derick Tyler, on December 14, 2005, by depositing the copy in the office depository for collection and delivery by first-class mail, postage pre-paid, to him as follows: Derick Tyler, *pro se*, MCI Souza-Baranowski Correctional Facility, P.O. Box 8000, Shirley, Massachusetts 01464.



Jonathan Ofilos
Assistant Attorney General

opportunity, to file an answer and assert all other applicable defenses.